

Hon. J. Richard Creatura

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON

NATHAN BARTON,  
Plaintiff,

v.

JOE DELFGAUW, et al.

Defendant.

No. 3:21-cv-05610-JRC

**MOTION FOR THE COURT TO ISSUE  
DISCOVERY ORDER**

**NOTED FOR: December 24, 2021**

JOE DELFGAUW, et al.  
Counterclaimants,

v.

NATHAN BARTON,  
Counter defendant

**MOTION**

COMES NOW Defendants/Counterclaimants JOE DELFGAUW (“DELFGAUW”),  
XANADU MARKETING INC. (“XANADU”), and STARTER HOME INVESTING INC.  
 (“STARTER”) (herein referred to collectively as “the collective defendants/counterclaimants”)

by and through their undersigned attorney of record and move this Court for the issuance of a discovery order.

### RELEVANT FACTS

This is a complaint for damages under the TCPA, in which Plaintiff NATHEN BARTON claims damages caused by Defendants DELFGAUW, XANADU., and STARTER, among others. Counterclaimants DELFGAUW, XANADU., and STARTER claim fraud on the part of the Counter defendant, Plaintiff NATHEN BARTON.

The Complaint was filed on August 23, 2021. Counsel for Defendant DELFGAUW and XANADU appeared on September 20, 2021 and Answers and Counterclaims were filed on October 5, 2021. STARTER was not served at the same time and its Answer and Counterclaims were filed on November 9, 2021.

During the pendency of Defendants/Counterclaimant's appearance, the following discovery has been propounded by Plaintiff/Counterclaimant:

October 29:

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total sets
10/29/21	CC	XANADU	Admissions	22		1
10/29/21	CC	XANADU	Interrogatories	2		1
10/29/21	CC	XANADU	Production	9		1
10/29/21	Def	XANDAU	Admissions	5		1
10/29/21	Def	XANADU	Interrogatories	4		1

10/29/21	Def	XANADU	Production	14		1
10/29/21	CC	DELFGAUW	Production	16		1
10/29/21	CC	DELFGAUW	Interrogatories	10		1
10/29/21	CC	DELFGAUW	Admissions	16		1
10/29/21	Def	DELFGAUW	Production	12		1
10/29/21	Def	DELFGAUW	Admissions	26		1
10/29/21	Def	DELFGAUW	Interrogatories	8		1

*See Declaration of DBG in support of motion .*

Then on November 9, 2021, the following were issued:

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total sets
11/9/2021	CC	STARTER	Production	15		1
11/9/2021	CC	STARTER	Admissions*  w/drawn –  resubmitted  12/9	13		1
11/9/2021	Def	STARTER	Production	4		1
11/9/2021	Def	STARTER	Interrogatories	7		1

11/9/2021	Def	DELFGAUW	Admissions	4	30	2
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*Id.* Before those could be answered, another round was sent on November 18, 2021

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total sets
11/18/2021	CC	DELFGAUW	Production	2	21	3
11/18/2021	CC	XANADU	Production	3	12	2
11/18/2021	CC	STARTER	Production	3	20	2
11/18/2021	CC	XANADU	Admissions	83	111	3
11/18/2021	CC	STARTER	Admissions	82	101	3

*Id.* Followed the next day by the following:

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total sets
11/19/2021	DEF	DELFGAUW	Production	13	25	2
11/19/2021	CC	STARTER	Admissions	2	103	2
11/19/2021	CC	DELFGAUW	Admissions	12	57	5

*Id.* Five days later another:

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total sets
11/24/2021	D	STARTER	Admissions	21	21	1

*Id.* And two days later, yet another round

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total sets
11/26/2021	D	STARTER	Admissions	2	23	2
11/26/2021	CC	DELFGAUW	Admissions	37	92	6
11/26/2021	CC	XANADU	Admissions	12	124	4

*Id.* And again three days later:

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total sets
11/29/2021	Def	DELFGAWU	Admissions	4	37	3
11/29/2021	Def	STARTER	Production	3	15	2
11/29/2021	Def	XANADU	Admissions	16	21	2
11/29/2021	CC	DELFGAUW	Production	2	24	4

*Id.* And again three days later, December 2, 2021 another set of requests was sent. *Id.*

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total sets
12/2/2021	CC	DELFGAWU	Admissions	11	104	3

Then four days later, another round was sent:

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total Sets
12/7/2021	CC	DELFGAUW	Admissions	12	114	8
12/7/2021	D	STARTER	Production	3	18	3
12/7/2021	Def	DELFGAUW	Production	3	27	5
12/7/2021	CC	STARTER	Interrogatories W/D ON 12/7 AFTER DISC CONFERENCE	1	9	3

*Id.* And then another round later that day

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total Sets
12/7/2021	CC	DELFGAUW	Interrogatories	1	12	2

*Id.*

And again at 11:57 PM Sunday, December 12, 2021

Date	Def/CC	Name	Type	Amt	TOTAL # OF ?S	Total Sets
12/12/2021	CC	DELFGAUW	Admissions	26	141	9
12/12/2021	Cc	DELFGAUW	Production	5	32	6

The parties held a discovery conference on December 2, 2021 to discuss the objections and alleged non-responses by Plaintiff /Counter defendant BARTON had. *Id.* Then on December 9, 2021, the Plaintiff “resubmits” his withdrawn Requests for Admissions to

Counterclaimant Starter Homes First Requests for Admissions – apparently the same ones original sent on November 9<sup>th</sup>. *Id.*

### AUTHORITY AND ARGUMENT

Although the Federal Rules of Civil Procedure only spell out a limit to the number of total interrogatories one party may propound to another (limiting interrogatories to 25, including subparts FRCP 33), FRCP 26(b)(2)(c) states as follows:

When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

FRCP 26(B)(2)(c).

This *should* be a rather simple case. Certainly, other than attorneys fees (and Plaintiff/Counter defendant is *pro se in this matter*), the amount in controversy in Plaintiff's complaint is limited. The statutory damages available in this case are \$500 per violation, and courts have discretion to award treble damages (\$1,500) for willing or knowing violations. Plaintiff has not pled any actual damages. The discovery requests in this matter are quite disproportionate considering the damages.

1 Certainly the rules do not contemplate what is occurring in this case – rapid fire sets of  
2 discovery only a week or so apart, before answers to outstanding sets can be compiled. What  
3 BARTON is conducting is discovery abuse<sup>1</sup> and if not abuse, then it is being done in a manner  
4 to bombard the defendants/counterclaimants.

5 There does not appear to be any caselaw on this subject, but surely the court can  
6 intervene and control the limits and extent of discovery.

7 Mr. Barton seems hellbent on bombarding the parties with rapid fire sets of requests  
8 for discovery in the hopes that, especially admissions, will get buried in the pile, deadlines  
9 missed and he can trudge forth with his mission. He clearly has no concept of how litigation is  
10 conduction. He sent an email with his second set of discovery requests on December 7, 2021,  
11 stating

12 “ Hello, I apologize for submitting two separate discovery requests on the same day but  
13 lawyers do what they do when they do it and I did not know this was coming.” *See decl. of*  
14 *DBG filed herewith.* If this is not discovery abuse, it is certainly bordering on it. If the roles  
15 were reversed and counsel for defendants were conducting discovery in this manner, surely  
16 our feet would be put to the fire for these tactics.

17 The collective defendants/counterclaimants request this Court issue a discovery order  
18 that limits the number of outstanding discovery requests to a party to one of each type.  
19 Further, we ask the Court to order Plaintiff/Counter defendant BARTON to combine all of the  
20 outstanding discovery into one document to ease in the response. For example, take the **eight**

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21  
22 <sup>1</sup> The defendants/counterclaimants are not bringing to the court the issue of  
the content of the requests. That would be addressed at a later date.



1 outstanding sets of requests for admissions to defendant JOE DELFGAUW and combine  
 2 them into one document<sup>2</sup>. And then wait until there is a response before he send set number  
 3 nine, should he desire to do so.

4 There are so many sets sent at varying times that counsel honestly has no idea if she  
 5 has all of the requests and the fact that Mr. Barton may get a thought in his head one day and  
 6 fire off a round, without even waiting for the response to the outstanding discovery, which  
 7 could reasonably answer the set popping into his head, would help streamline the discovery  
 8 process.

9 The discovery cut-off date in this matter is not until June 22, 2022 and  
 10 Plaintiff/Counter defendant will not be prejudiced in any way by streamlining his requests. As  
 11 it stands, his requests in their current form are insanely burdensome to the combined  
 12 defendants/Counterclaimants. It took counsel over an hour to compile the table used in this  
 13 motion. *See declaration of DBG.* And then when BARTON withdraws and amends his  
 14 requests and then reissues them, it is further convoluted as to what his requests are the  
 15 collective defendants/counterclaimants

### 16 RELIEF REQUESTED

17 The collective defendants/counterclaimants hereby request this court to Order  
 18 Plaintiff/Counter defendant to streamline his discovery requests by combining the outstanding  
 19 discovery into one set of each type to each defendant and wait until those are responded to  
 20 before issuing additional discovery requests.

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22 <sup>2</sup> The latest set propounded on December 12 was labeled Ninth Request. The  
 23 first request was already answered.

Respectfully submitted this 13<sup>th</sup> day of December, 2021.

s/Donna Gibson

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